



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/168548

PRELIMINARY RECITALS

Pursuant to a petition filed September 8, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Wisconsin Department of Health Services, Milwaukee Enrollment Services agency, in regards to an overpayment of FoodShare benefits (FS), a telephone hearing was held on November 4, 2015, at Milwaukee, Wisconsin. A hearing set for September 29, 2015, was rescheduled at the petitioner's request. At the request of the agency, the record was held open for the submission of additional information.

The issue for determination is whether the Department has correctly determined that the petitioner was overpaid \$2,572 of FS benefits due to a client error in under-reporting income.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She was the casehead of a 3person FS household in at least the period of August 1, 2014, through August 31, 2015.

2. On August 28, 2014, the petitioner submitted her final paystub from her employer, the State of Wisconsin. \$0 of income was budgeted for September, 2014, FS for the household.
3. On September 8, 2014, the agency issued a Notice to the petitioner that informed her, among other things, that Her FS would increase from \$497 to \$511, and that if her household income went about \$2,144 per month, she must report it by the 10th day of the next month. See, Exhibit #1, at pp. 59-60.
4. On September 19, 2014, the petitioner completed a renewal application for FS; and apparently she also withdrew a six month report form submitted online that had reported a new employer. See, Exhibit #1, p. 1.
5. \$0 of income was used for FS budgeting for October, 2014, and the household was issued \$511 of FS for that month.
6. On or about October 2, 2014, the petitioner reported that she was working 36 hours per week to the agency at a new job. See, Exhibit #1, at p. 4, Case Comments for 10/2/14.
7. On a date unknown subsequent after the October 2, 2014, report, and apparently as the result of an otherwise undocumented in the record verification process, that she was earning \$2,185.78 at [REDACTED] Inc.; and used that sum to determine her November & December, 2014, and January, February & March, 2015, FS gross income amounts in each month. See, Exhibit #1, at pp. 72-76; and see, Exhibit #1, at p. 87 "SWICA Discrepancy Details", dated May 8, 2015.
8. \$2,185.78 of income was used for FS budgeting for November, 2014, and the household was issued \$179 of FS for that month, and then each subsequent month through March, 2015.
9. On or about March 11, 2015, the petitioner provided a six month report form and her paystubs for the last thirty days prior to this date. See, Exhibit #1, at p. 4, Case Comments for 3/11/15.
10. On March 25, 2015, the petitioner reported to the agency's child care unit that she was employed by [REDACTED] for 39 hours per week, and again reported her wages. See, Exhibit #1, at pp. 3-4, Case Comments for March 25, 2015.
11. The agency budgeted the petitioner's April and May, 2015, FS eligibility based upon these two March reports, using gross earned income of \$2,632.28, apparently including some actual overtime received by her. This decreased her April, 2015, FS to \$20. See, Exhibit #1, at p. 77.
12. On April 17, 2015, the petitioner called the agency to complain about the computation of her FS and the decrease to \$20 of FS and was told if she disagreed she could appeal, but FS decreased because earned income had increased. See, Exhibit #1, at pp. 3-4, Case Comments for March 25, 2015. See, Exhibit #1, at pp. 3-4, Case Comments for April 17, 2015.
13. On May 8, 2015, the agency received a so-called "discrepancy report" from the State Wage & Income Crossmatch (SWICA) that indicated that she had been paid more in wages in the 4th Quarter of 2014 than she had reported to the FS agency; and the matter was referred to the Public Integrity Unit to ascertain if an overpayment had occurred. See, Exhibit #1, at pp. 3-4, Case Comments for June 12, 2015; and see, at p. 87, "SWICA Discrepancy Details".
14. On or about May 13, 2015, the petitioner contacted the agency to report that her FS had gone down to \$20, effective April and May, 2015, and that she disagreed and believed her income was being counted incorrectly. Subsequently, the agency reviewed and found a worker had used paystubs that were higher than the amount the petitioner had provided in a concurrent Employment Verification of Earnings Report, and apparently the agency then changed her income for purposes of June, July, and August, 2015, to gross earnings of \$2,495.72 in each month based upon the EVE-R data. See, Exhibit #1, at p. 3, Case Comments for May 13, 2015; and at p. 78, FS Worksheets for June – August, 2015.
15. On or about July 31, 2015, the agency received a second SWIC Discrepancy Details report again reporting that the petitioner's actual income for the 1st Quarter of 2015, as reported to the Department

of Workforce Development, exceeded her then reported income to the agency for the first quarter of 2015, by \$607.79 in January and February, each, and by \$194.43 in March, 2015. See, Exhibit #1 at p. 88.

16. On August 13, 2015, as a consequence of the second SWICA Discrepancy report, the agency sent a verification request to the petitioner for proof of her earned income. A reply was due by August 24, 2015. See, Exhibit #1, at p. 3, Case Comments for August 13, 2015.
17. On August 18, 2015, the agency received from the petitioner one check stub dated August 6, 2015, from the State of Wisconsin, and a set of paystubs from [REDACTED], Inc. for the period of 10/14 through 08/12/15. The petitioner also reported to the agency that she had been paying \$200 per month of dependent cares expenses for her child Julien, and \$760 per month of such expenses for her child Ethan. The agency replied by asking her to verify the child care expenses. See, Exhibit #1, at p. 3, Case Comments for August 18 – 27, 2015; and see, Exhibit #1, at p. 81, Verification Request letter of that date.
18. On or about August 27, 2015, the petitioner provided two brief statements in an attempt to verify dependent care expenses. See, Exhibit #1, at pp. 82-83.
19. The first was handwritten and dated “8-27-15”, stated only “I Vera H. watches Ethan Walters weekly for \$120.00. Vera H.” See, Exhibit #1m at p. 82.
20. The second, dated August 25, 2015, was typed with a day care letterhead, and stated “Dear [REDACTED], ...The total amount, out of pocket, that you have paid toward [REDACTED]’s (sic) tuition in 2015, is \$789.50. [REDACTED] Program Director”. See, Exhibit #1, at p. 83.
21. The agency disallowed both asserted expenses as dependent care expenses for FS purposes because the statements were vague as to when the expenses were actually paid in 2014 or 2015; and the expenses remained questionable items that were not sufficiently verified. See, Exhibit #1, at p. 82-83 marked “Questionable” in handwriting.
22. On September 2, 2015, the Department issued a FoodShare Overpayment Notice and attached Worksheets to the petitioner informing her that it had determined that she had been overissued \$2,572 in FS benefits between October, 2014, and August, 2015, due to a client error, i.e., a failure to report household income exceeding program limits. See, Exhibit #1, at pp. 72-76.
23. On September 8, 2015, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the FS overpayment determination of September 2, 2015.

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also *FoodShare Wisconsin Handbook*, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook*, App. 7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. *FoodShare Wisconsin Handbook*, 7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.* In addition, a FS household must report increases in earned income that exceed 130% of the federal poverty limit within 10 days of the increase. See, 7 C.F.R. § 273.12(a)(5)(v); and see, *FoodShare Wisconsin Handbook*, 6.1.1.2.

As all amounts sought for recover here are within 12 months prior to discovery in September, 2015, all overpayments that actually occurred here, if any, are clearly recoverable regardless of fault under federal law.

First, there is absolutely no question, based upon the paystubs that the petitioner ultimately provided for the entire overpayment period, which were also generally corroborated by the SWICA crossmatch report, that the agency has correctly calculated the petitioner's corrected FS income in the budget, on overpayment review, for the period tested in the overpayments. See, Exhibit #1, at pp. 18, 19 – 40, 72 – 72, 87-88, and 9.

Second, the petitioner was warned in Notices of Decision issued on September 8, 2014, and again on May 18, 2015, that there were income reporting thresholds requiring a report in increases of income above \$2,144 per month in September, 2014; and above \$2,226.65 in May, 2015. See, Exhibit #1, at pp. 60 and 67.

Third, it is clear that these reporting thresholds were triggered by income that exceeded each limit in at least October, 2014, and June, 2015, corresponding to each Notice of Decision referenced in the foregoing paragraph. See, Exhibit #1, at pp. 18, p.60 & p. 67.

Fourth, it is clear that the income being budgeted based upon petitioner reports were not accurate and substantially under-reported in 9 of the 11 months in the test period. See, Exhibit #1, at pp. 72-79; and see, Exhibit #1, at p. 18. (In two months, April & May, 2015, she earned \$100, and \$300, less than originally budgeted, respectively.) See, Exhibit #1, at pp. 72-79; and at p. 18.

Fifth, and finally, it is clear that the petitioner has not provided accurate, specific or adequately document proof in this record that she had dependent care expenses that should be allowed in her FS budgets on review for overpayments, for any specific and discernible periods of time. The two documents provide were simply too vague and unreliable to support such an allowance for any part of the tested overpayment. See, Exhibit #1, at pp. 82-83. The agency disallowed them as expenses, and I concur. These statements are woefully short of establishing any fixed and accurate periods of out-of-pocket dependent care expenses. The petitioner needed to do more if she desired to establish them as fact. She has not.

I understand, somewhat, the petitioner's frustration in that she was reporting work and earnings, and that in some months her income did not exceed the reporting thresholds by a great sum of money. This understanding is tempered, somewhat, by the fact that in several months she exceeded the thresholds by more than \$500 and in two months, her income exceeded the limits and the reporting thresholds *by well over \$1,000*. See, Exhibit #1, at p. 18, December, 2014, income of \$5,922.18 and January, 2015, gross income of \$3,620.25. The FoodShare Program is a means-tested program. Always has been and always will be. When a household experiences a prolonged period of earnings that is a total of about \$5,000 more in two months than usually, it should be expecting to have to report those earnings and have FS reduced. Period. See, Exhibit #1, at p. 18.

Under this fact pattern, the Department has produced sufficient evidence to meet and exceed the preponderance of the evidence standard demonstrating that the petitioner was overpaid \$2,572 of FoodShare benefits in the test period due to a client error in underreporting her income for a prolonged period of time. This overpayment determination must be sustained.

CONCLUSIONS OF LAW

That the Department correctly determined that the petitioner was overpaid \$2,572 of FoodShare benefits in the period of October, 2014 – August, 2015 (FS Claim No. [REDACTED]) due to client error.

THEREFORE, it is

ORDERED

That the petition for review herein be, and the same hereby is, dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

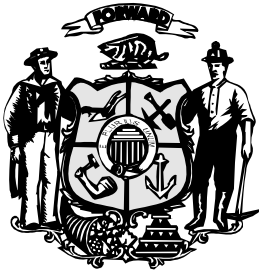
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of November, 2015

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 24, 2015.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability